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Although most cemeteries are private or charitable in nature, nevertheless where there is a clear public profession and where the undertaking is on a strictly business basis the calling is no doubt a public one. See *Evergreen Cemetery Association v. Beecher*, 53 Conn. 551, 553, 5 Atl. 353. Thus such corporations have by statute been given the right to acquire property by eminent domain. See *Wolford v. Crystal Lake Cemetery Association*, 54 Minn. 440, 445, 56 N. W. 56; *Rosehill Cemetery Co. v. Hopkinson*, 114 Ill. 209, 214, 29 N. E. 685. Unless the corporation in the principal case is private or charitable, which does not appear clearly from the facts, the case would seem a proper one for issuing a writ of mandamus.

RAILROADS — LIABILITY FOR FIRES — VALIDITY OF STIPULATIONS AGAINST LIABILITY FOR NEGLIGENCE. — Buildings of an ice company were destroyed by fire through the negligence of a railroad in operating a siding. The siding was on the railroad's right of way and in its control although constructed originally to accommodate the ice company. In an action for damages, the railroad claimed exemption from liability by virtue of a special contract. *Held*, that the contract is against public policy. *Stoneboro & Chautauqua Lake Ice Co. v. Lake Shore & Michigan Southern Ry. Co.*, 86 Atl. 87 (Pa.). See NOTES, p. 742.

RECORDING AND REGISTRY LAWS — EFFECT OF RECORDING: IN GENERAL — ADVERSE POSSESSION UNDER UNRECORDED DEED. — A. who had long been in adverse possession of certain land, obtained, before the statute of limitations had completely run in his favor, a deed to the premises from the owner, B., which he never recorded. A. continued to hold for the full period of the statute of limitations and soon after died. C., entering upon the land, obtained a second deed from B., recorded it and sold the land to a purchaser for value without notice. A.'s heirs now claim the property. *Held*, that they are entitled as against the *bonâ fide* purchaser. *Winters v. Powell*, 61 So. 96 (Ala.).

As a general rule recording acts do not protect the purchaser of a good record title against one who has acquired a title through adverse possession, whether the adverse possessor was occupying at the time of the purchase or not. *Hughes v. Graves*, 39 Vt. 359; *Schall v. Williams Valley R. Co.*, 35 Pa. St. 191. The majority of the court in the principal case decided that one can hold adversely although holding under an unrecorded deed. Although no cases exactly in point have been found, this would seem to be contrary to the general effect of recording statutes as construed by the courts, the purpose of recording statutes being only to give notice. As between the original parties and as against any person not expressly protected by the words of the statute, it seems settled that an unrecorded deed is an effective conveyance, recording not being necessary as a part of its execution. *Sidle v. Maxwell*, 4 Oh. St. 236; *Aubuchon v. Bender*, 44 Mo. 560. The Alabama courts have themselves adopted this view. See *Wood v. Lake*, 62 Ala. 489, 492. After the delivery of the unrecorded deed therefore, the grantee's possession could not be adverse, and rights under the unrecorded deed should be inferior to those of the *bonâ fide* purchaser of the record title.

RESTRAINT OF TRADE — SHERMAN ANTI-TRUST ACT — MONOPOLY A CONTINUING OFFENSE. — The defendants were indicted for a monopoly in violation of the Sherman Act. The unfair acts on which the monopoly was built up were committed more than three years prior to the indictment. *Held*, that the three-year statute of limitations is not a bar. *United States v. Patterson*, 201 Fed. 697 (Dist. Ct., S. D. Ohio).

In the Standard Oil case, unfair acts committed prior to the passage of the Sherman Act were used to throw light on the intent with which the combination

was effected after the act. *Standard Oil Co. v. United States*, 221 U. S. 1, 31 Sup. Ct. 502. But the principal case goes farther, for nothing but the continuing of a monopoly already acquired is alleged within the statutory period. It has several times been held that conspiracy to restrain trade is a continuing offense under the act. *United States v. Kissell*, 218 U. S. 601, 31 Sup. Ct. 124; *United States v. Swift*, 186 Fed. 1002. See 24 HARV. L. REV. 505. Likewise contracts in restraint of trade are not saved by virtue of having been entered into before the act was passed. *United States v. Trans-Missouri Freight Association*, 166 U. S. 290, 17 Sup. Ct. 540. It is true that the mere continuance of the result of a crime does not continue the crime. *United States v. Irvine*, 98 U. S. 450. But the Sherman Act condemns "monopolizing," and seems therefore to make illegal the mere continuance of a monopoly illegally acquired. The act was aimed not more at the unfair acts in themselves than at the condition of stifled competition in which they result. The view of the principal case finds support in the language of several cases. See *United States v. MacAndrews & Forbes Co.*, 149 Fed. 823, 830; *Standard Oil Co. v. United States*, *supra*, 58-62, 77.

**SPECIFIC PERFORMANCE — OPTION TO PURCHASE — ENFORCEMENT AGAINST AN INTERVENING PURCHASER WITH NOTICE.** — A vendor of land in consideration of one dollar gave the plaintiff an option to purchase the land for a specified price at any time during the next thirty days. During this period the defendant purchased the land with notice of this option. The plaintiff exercised his option in due time and brought a bill for specific performance against the defendant and the vendor. The defendant demurred. *Held*, that the demurrer should be overruled. *Horgan v. Russell*, 140 N. W. 99 (N. D.). See NOTES, p. 747.

**SURETYSHIP — SURETY'S DEFENSES: OMISSIONS OF CREDITOR — BANK'S FAILURE TO APPLY DEPOSIT OF DEBTOR ON ITS CLAIM AGAINST HIM.** — The maker of a note after its maturity had general deposits with the bank holding the note sufficient to cover the debt, but afterwards withdrew them. *Held*, the surety is not released. *National Bank of Commerce v. Gilvin*, 152 S. W. 652 (Tex., Ct. Civ. App.).

The bank had the undoubted right to apply the deposit to discharge the debt. *Bank v. Brewing Co.*, 50 Oh. St. 151; *Clark v. Northampton Bank*, 160 Mass. 26, 35 N. E. 108. Any release by the creditor of securities though acquired subsequent to the debt releases the surety to the value of the security. *Baker v. Briggs*, 8 Pick. (Mass.) 122; *Rogers v. School Trustees*, 46 Ill. 428. If this is solely because the surety loses his right of subrogation against the security, it has no application in the principal case where there is no security. *National Mahaiwe Bank v. Peck*, 127 Mass. 208. For the bank has no lien on the deposits. Thus it cannot hold the deposit if the note is not due. *Merchants' National Bank v. Robinson*, 97 Ky. 552; *Columbia National Bank v. German National Bank*, 56 Neb. 803, 77 N. W. 346. If there were a lien, though the deposits were insufficient to cover the debt, their payment would discharge the surety *pro tanto*. *Wharton v. Duncan*, 83 Pa. St. 40; *Cummings v. Little*, 45 Me. 183. But such is not the law. *People's Bank v. Legrand*, 103 Pa. St. 309; *Bacon's Administrators v. Bacon's Trustees*, 94 Va. 686, 27 S. E. 576. But the creditor's duty to the surety is more than mere refraining from interference with his right to subrogation. Thus he must register documents if necessary to protect the security. *State Bank v. Bartle*, 114 Mo. 276, 21 S. W. 816. He must notify the surety in certain cases. 1 BRANDT, SURETYSHIP, 3 ed., c. viii. He must accept a tender by the debtor. *Curia v. Packard*, 29 Cal. 194; *Spurgeon v. Smilha*, 114 Ind. 453, 17 N. E. 105. But he owes no duty to accept burdensome security. *Fuller v. Tomlinson Brothers*, 58 Ia. 111,